



Mitchell Schuster
Partner
Direct (212) 655-3549
Fax (646) 539-3649
ms@msf-law.com

May 5, 2020

VIA ECF

Honorable Alison J. Nathan
United States District Court
Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007

Re: Belinda Baker, et al. v. Bensalz Productions Inc., et al.
Case No. 1:20-cv-03342-AJN
Letter Motion For Extension of Time to Respond to Complaint

Dear Judge Nathan:

We represent defendant Excel Sports Management, LLC (“Excel”) in the above referenced action (the “Action”), which has been transferred to this Court pursuant to the April 28, 2020 order by Judge Douglas R. Cole of the United States District Court for the Southern District of Ohio, Western Division (the “Transfer Order”). See Civil Docket Sheet from Southern District of Ohio, ECF Doc. # 59 (“Docket Sheet”), Doc. # 58. Today we received the Court’s Notice of Initial Pretrial Conference, scheduled for June 12th at 3:00 pm. I am writing to briefly set forth the status and procedural posture of the Action and to request an extension of time to June 26, 2020 to respond to the amended complaint.

The Action was commenced *pro se* in November of 2018 by plaintiff Belinda Baker and two affiliated entities, Starborne Productions, LLC and Starbreacher Enterprises, LLC (“Plaintiffs”) against Excel and co-defendant Bensalz Productions, Inc. (“Bensalz,” and together with Excel, the “Defendants”). See Docket Sheet, Doc. # 1. Plaintiffs amended their complaint in December 2018 (the “FAC”) and service on the Defendants was effectuated in February 2019. See Docket Sheet, Doc. #'s 2, 6-8.

In the FAC Plaintiffs assert an assortment of tort and contract claims against the Defendants relating to actions that took place in 2011 and 2012 relating to a fictional character created by Plaintiffs known as “Finney the Starbreacher.” According to the FAC, Plaintiffs allege that they entered into a written contract with defendant Bensalz to act as co-producer and

84391/7942274.v1

125 Park Avenue, 7th Floor, New York, NY 10017 | Phone (212) 655-3500 | Fax (212) 655-3535 | meisterseelig.com

Hon. Alison J. Nathan

May 5, 2020

Page 2

partner in connection with the sale, financing and/or production of an animated feature film project for “Finney the Starbreacher” (the “Finney Project”). Plaintiffs also allege that Bensalz introduced them to defendant Excel, and thereafter an oral agreement was reached for Excel to act as Plaintiffs’ agent for the Finney Project. Plaintiffs claim that the Defendants breached their separate agreements with Plaintiffs and, *inter alia*, bring claims for breach of contract, fraud, breach of fiduciary duty, tortious interference and civil conspiracy against Defendants.

Defendant Excel responded to the FAC in early March 2019 by moving to dismiss on several grounds, including (i) that the Court lacked personal jurisdiction over Excel; (ii) that Plaintiffs’ claims are barred by the applicable statute of limitations; and (iii) that Plaintiffs’ claims against Excel fail to state a claim and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). See Docket Sheet, Doc. # 15. Defendant Bensalz thereafter made a similar motion. See Docket Sheet, Doc. # 21.

Plaintiffs thereafter retained counsel and opposed both motions (the “Motions to Dismiss”). See Docket Sheet, Doc. #'s 23,28, 30. Significantly, Plaintiffs’ opposition to the Motions to Dismiss only addressed the personal jurisdiction issues raised by Defendants, and did not present any opposition to those portions of the Motions to Dismiss that sought dismissal based upon the expiration of the applicable statutes of limitations or the failure to state a claim.

In October 2019, months after the Motions to Dismiss were fully submitted, Plaintiffs moved for permission to amend their complaint a second time and add several parties, including principals of both defendants and various entities alleged to be affiliated with Fox Broadcasting, which both defendants opposed. See Docket Sheet, Doc. #'s 40,43,44.

In January of 2020, the Action, which was originally assigned to the Hon. Timothy Burke, was reassigned to Judge Douglas R. Cole. See Docket Sheet, Doc. # 52. Soon thereafter, Judge Cole issued an order on the Motions to Dismiss, granting those portions of the Motions which sought dismissal based on lack of personal jurisdiction, and denying as moot those portions of the Motions to Dismiss that sought dismissal on statute of limitations and/or Rule 12(b)(6) grounds. The Court also denied as moot Plaintiffs’ motion to amend the complaint a second time and add additional parties. (the “Dismissal Order”). See Docket Sheet, Doc. #'s 53-54.

Plaintiffs thereafter made a motion seeking reconsideration of the Dismissal Order and permission to take jurisdictional discovery on the personal jurisdiction issue. Plaintiffs alternatively sought, for the first time since the commencement of this Action, that the Court transfer the Action to this Court. See Docket Sheet, Doc. # 55. Although both Defendants opposed Plaintiffs’ post-judgment motion (Docket Sheet, Doc. #'s 56-57), the

Hon. Alison J. Nathan

May 5, 2020

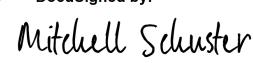
Page 3

Court granted that portion of the motion which sought transfer here, and the Action was transferred to this Court on April 29, 2020.

Since Judge Cole did not rule on the substantive portions of Excel's motion to dismiss, but rather denied those portions as "moot" when he granted dismissal on personal jurisdiction grounds, Excel plans on renewing its motion to dismiss in this Court so the Court can decide whether to dismiss the Action based on statute of limitations and/or failure to state a claim grounds. Judge Cole also denied as "moot" Plaintiffs' motion to amend their complaint a second time. Excel believes that such motion has no merit, as is set forth in its opposition to such motion, which motion was made well after the submission of all briefing on the Defendants' motions to dismiss. (Docket Sheet, Doc. # 44).

Based on the foregoing, we respectfully request that, at the Pretrial Conference, the Court address with the parties the best way to proceed. At that conference we would request that the Court allow Excel to submit a renewed motion to dismiss the FAC. In addition, pending a conference in this Action and pursuant to Rule 1(C) and (D) of the Court's Individual Practices in Civil Cases, Excel respectfully requests an extension to June 26, 2020 of its time to answer and/or move with respect to the FAC to give Excel time to make such motion following the upcoming conference with the Court. This is the first request by Excel for such an extension. On May 3rd we sent an email to John Hui Li, counsel to Plaintiffs in this action, and requested consent to this request for an extension. To date we have not received a response to such request. We have spoken to counsel for co-defendant Bensalz, who consent to this extension request.

Respectfully submitted,

DocuSigned by:

DB8E3A4454DF462...
Mitchell Schuster

cc: All Counsel of Record (via ECF)

8439/1/7942274.v1

Meister Seelig & Fein LLP

125 Park Avenue, 7th Floor, New York, NY 10017 | Phone (212) 655-3500 | Fax (212) 655-3535 | meisterseelig.com